

for the second offense, and that is why this has come to your consideration. If you believe from the evidence the defendant shipped and delivered in interstate commerce boxes containing bottles of misbranded drugs, to wit, La Nobleza and Sin Igual, the contents of which and the labels thereon being identical with the contents and labels of the misbranded drugs shipped and delivered for shipment as hereinbefore in the first and second counts hereof set forth; that such proceedings were had upon such information and that said Juan Gandara pleaded guilty to the said information so filed in the District Court of the United States for the District of New Mexico, then you will find the defendant guilty as charged in the third count of the information.

You are the sole judges in this case of the credibility of the witnesses and the weight to be given to their testimony. And for that purpose you may consider the fairness or the unfairness, the prejudice, bias, or interest in the result of your verdict, if any, of any witness who has testified before you, his demeanor while testifying, his apparent carefulness and fairness on the stand, his opportunity to know and correctly relate the facts, and whether his testimony is positive or negative in character, and determine from the whole of the evidence where the truth in the case lies.

The defendant is presumed to be innocent until his guilt is established by the evidence beyond a reasonable doubt; to the benefit of this presumption the defendant in this case is entitled, and it stands as his sufficient protection until the same has been removed by evidence establishing his guilt beyond a reasonable doubt.

A reasonable doubt is such a doubt as would cause a reasonable and prudent man, in the graver and more important affairs of life, to pause and hesitate to act upon the truth of the matter charged. But a reasonable doubt is not a mere possibility of innocence, nor a caprice, shadow, or speculation as to innocence not arising out of the evidence or the want of it. The jury should patiently and dispassionately weigh and consider the testimony and bring to bear upon it the exercise of common sense and judgment as reasonable men. And if, after considering the evidence, you can say that you have an abiding conviction of the truth of the charge then you are satisfied beyond a reasonable doubt.

The jury thereupon retired and after due deliberation returned a verdict of guilty, whereupon the court sentenced the defendant to serve one year in jail and to pay the costs of the proceedings.

E. D. BALL, *Acting Secretary of Agriculture.*

9009. Adulteration and misbranding of Almanaris Water. U. S. * * * v. 257 Cases * * * of Almanaris Water * * *. Consent decree of condemnation, forfeiture, and destruction. (F. & D. No. 13292. I. S. No. 4112-t. S. No. C-2457.)

On or about September 2, 1920, the United States attorney for the District of Indiana, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 257 cases, more or less, 1-gallon size, of Almanaris Water, remaining unsold in the original unbroken packages at Indiana Harbor, Ind., alleging that the article had been shipped by the Almanaris Mineral Spring Co., Waukesha, Wis., on or about July 14, 1920, and transported from the State of Wisconsin into the State of Indiana; and charging adulteration and misbranding under the Food and Drugs Act. The article was labeled in part, "A Pure Soft And Palatable Drinking Water * * *."

A sanitary analysis of a sample of the product made by the Bureau of Chemistry of this department showed the following results, expressed as milligrams per liter, except as otherwise given.

	Bottle.				
	1	2	3	4	5
Chlorid (Cl).....	7	7	.....	.....	.....
Bicarbonate (HCO ₃).....	313	313	.....	.....	.....
Free ammonia nitrogen (N).....	.006	.008	.....	.....	.....
Albuminoid ammonia nitrogen (N).....	.004	.006	.....	.....	.....
Nitrite nitrogen (N).....	.000	Trace.	0.000	0.010	0.000
Nitrate nitrogen (N).....	5.000	5.000	.....	.....	.....

Residue at 110° C. does not darken.

Bacteriological examination showed the presence of *B. coli* in small quantities of the water.

Adulteration of the article was alleged in the libel for the reason that it consisted wholly or in part of a filthy, decomposed, or putrid animal or vegetable substance.

Misbranding of the article was alleged for the reason that the statement, "A pure * * * drinking water," borne on the labels as aforesaid, was false and misleading, and deceived and misled the purchaser.

On October 8, 1920, the Almanaris Mineral Spring Co., Waukesha, Wis., and the Central Drug Store, Indiana Harbor, Ind., having filed an answer admitting the allegations of the libel and consenting to a decree, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be destroyed by the United States marshal.

E. D. BALL, *Acting Secretary of Agriculture.*

9010. Misbranding of Perry's Swine-Lixir. U. S. * * * v. 18 Cases of * * * Perry's Swine-Lixir. Default decree of condemnation, forfeiture and destruction. (F. & D. No. 10104. I. S. No. 5990-r. S. No. C-1176.)

On April 25, 1919, the United States attorney for the Middle District of Alabama, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 18 cases of Perry's Swine-Lixir, remaining in the original unbroken packages at Dothan, Ala., alleging that the article had been shipped by the Swine Elixir Mfg. Co., Moultrie, Ga., on May 6, 1918, and transported from the State of Georgia into the State of Alabama, and charging misbranding in violation of the Food and Drugs Act, as amended. The article was labeled in part: (Bottle) "A Remedy For Hog Troubles Perry's Swine-Lixir * * * is especially recommended for Hog Cholera in every form. * * * If this medicine is given according to our directions there will be no reason for stock raisers to lose any Hogs by reason of general sickness or disease. * * *."

Analysis of a sample of the article by the Bureau of Chemistry of this department showed that it consisted of an aqueous solution of sulphates of iron and calcium, sulphuric acid, a trace of volatile oil such as turpentine, and a sediment of iron oxid.

It was alleged in substance in the libel that the article was misbranded for the reason that the above-quoted statements appearing in the labels were false and fraudulent in that the product contained no ingredient or combination of ingredients capable of producing the therapeutic effects claimed for it on the said labels.

On March 15, 1920, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be destroyed by the United States marshal.

E. D. BALL, *Acting Secretary of Agriculture.*

9011. Misbranding of B-I-F Combination. U. S. * * * v. 4 Dozen Packages of * * * B-I-F Combination. Default decree of destruction. (F. & D. No. 10563. I. S. No. 16508-r. S. No. E-1549.)

On June 16, 1919, the United States attorney for the Southern District of Florida, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 4 dozen packages of B-I-F Combination, at Tampa, Fla., consigned by the W. H. Smaw Drug Co., Baltimore, Md., alleging that the article had been shipped on or about February 15, 1918, and transported from the State of Maryland into the State of Florida, and charging misbranding in violation of the Food and Drugs Act, as amended. The article was labeled in part, "B-I-F Emulsion For Internal Use * * * Prepared By W. H. Smaw Drug Co. Baltimore, Md."

Analysis of a sample of the article by the Bureau of Chemistry of this department showed that it consisted of two preparations, an emulsion for internal use and an